

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

R. W. ZUKIN CORPORATION,

Plaintiff,

v.

ALEX R. ORTIZ,

Defendant.

Case No. C-15-02188 RMW

**ORDER ADOPTING REPORT AND
RECOMMENDATION, REMANDING
CASE TO STATE COURT, AND
DENYING MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

[Re: Docket Nos. 2, 5]

On April 17, 2015 plaintiff R. W. Zukin Corp. (Zukin) filed a complaint alleging an unlawful detainer cause of action against defendant Alex Ortiz in the Superior Court of California, County of Monterey. Dkt. No. 1-1 at 12. Defendant Ortiz subsequently removed the action to federal court on May 15, 2015. *Id.* at 1. On May 15, 2015 defendant Ortiz filed a motion for leave to proceed in forma pauperis. On May 18, 2015 the magistrate judge ordered the defendant to show cause in writing why removal is proper to this district. Dkt. No. 4. Defendant failed to respond. Defendant also failed to comply with the magistrate judge's order to consent to or decline his jurisdiction. *Id.* On May 29, 2015 the magistrate judge referred this case for reassignment to a district court judge. Dkt. No. 6. The magistrate judge also issued a recommendation that the court

1 remand the action to state court for lack of subject matter jurisdiction. *Id.* The case is now before the
2 undersigned.

3 Having reviewed the magistrate judge's recommendation, the court adopts the magistrate
4 judge's recommendation in full.

5 The court has neither diversity jurisdiction nor federal question jurisdiction over this case.
6 The parties are not diverse. Plaintiff is a California corporation, and defendant Ortiz is a citizen of
7 California for jurisdictional purposes since California has been his state of domicile. Dkt. No. 1-1 at
8 13; *Redner v. Sanders*, No. 99-CV-9306-TPG, 2000 WL 1161080 (S.D.N.Y. Aug. 16, 2009).
9 Diversity jurisdiction also requires an amount in controversy in excess of \$75,000. 28 U.S.C. §
10 1332(a). On its face, the complaint indicates that the amount demanded does not exceed \$10,000.
11 Dkt. No. 1-1 at 12.

12 Additionally, the court also lacks federal question jurisdiction. The complaint alleges a state
13 cause of action for unlawful detainer, and states no federal claim. Although defendant Ortiz alleges
14 in his notice of removal that Zukin did not comply with 42 U.S.C. § 1983, this is his defense to the
15 unlawful detainer action, and therefore is insufficient as a basis for removal. *Vaden v. Discovery*
16 *Bank*, 556 U.S. 49, 60 (2009) ("federal jurisdiction cannot be predicated on an actual or anticipated
17 defense ... [n]or can federal jurisdiction rest upon an actual or anticipated counterclaim.").

18 Because the court lacks jurisdiction over plaintiff's claim, the court hereby REMANDS the
19 case to the Monterey County Superior Court.

20 Because the case is hereby remanded to state court and no further proceeding before this
21 court is necessary, the motion for leave to proceed in forma pauperis is DENIED as moot.

22 Dated: June 18, 2015

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25 RONALD M. WHYTE
26 United States District Judge
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